IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Appeal from Order No. 326 of 2005

Date of decision: 16th November, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 326 of 2005

1. Smt. Basanti Devi W/o Late Sri Birendra Singh @ Beeru.
2. Ranjeet Singh S/o Late Sri Birendra Singh @ Beeru.
3. Km. Bamo D/o Late Sri Birendra Singh @ Beeru.
4. Km. Geeta D/o Late Sri Birendra Singh @ Beeru.
5. Km. Meena D/o Late Sri Birendra Singh @ Beeru.
6. Harjeet Singh S/o Late Sri Birendra Singh @ Beeru.
7. Km. Leela D/o Late Sri Birendra Singh @ Beeru.

All R/o Village Mundi, Patti Paligad (Jonpur), Tehri Garhwal. …….. Appellants

Versus

1. Naresh Rangar S/o Sri Gurdayal, R/o Village Khyarsi, Patti Paligad (Jonpur), District Tehri Garhwal,
2. Oriental Insurance Company Ltd., through its Divisional Manager, Divisional Office Mussoorie, District Dehradun.
3. Birendra Singh S/o Sri Ramsaran, R/o Village Bharampuri, Patti Darajyula (Jonpur), District Tehri Gaarhwal. …… Respondents

Mr. N.S. Pundir, Advocate for the appellants.
None for respondents Nos. 1 & 3.
Mr. M.K. Goyal, Advocate for respondent No. 2 Oriental Insurance Co. Ltd.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C. S. Rawat, J.

RAJEEV GUPTA, C. J. (Oral)

The claimants have filed this appeal for enhancement of the compensation awarded by the Motor Accident Claims Tribunal / District Judge, Tehri Garhwal vide Award dated 20.04.2005 passed in Motor Accident Claim Petition No. 2 of 2004.

2. The claimants, who are unfortunate widow and minor children of deceased Birendra Singh @ Beeru, claimed compensation of Rs. 31,37,000/- for his death in the motor accident on 22.12.2003

when the Jeep bearing registration No. U.P.07-B-0109, in which he was travelling, met with an accident due to the rash and negligent driving of its driver resulting in multiple serious injuries to the occupants of the Jeep including Birendra Singh @ Beeru, who succumbed to his injuries on way to the hospital.

3. The owner, driver and insurer of the Jeep contested the claim and denied their liability to pay compensation to the claimants. The owner and driver of the Jeep, though admitted the fact of the accident, took the plea that the accident occurred due to sudden mechanical failure and as such, the driver was not responsible for the accident. The insurer, on the other hand, pleaded that the Jeep was being plied in breach of the policy conditions and the driver of the Jeep was not holding a valid driving license.

4. The Tribunal, on the evidence led by the parties, held that deceased Birendra Singh @ Beeru died on account of the injuries sustained by him in the motor accident on 22.12.2003; the accident occurred due to the rash and negligent driving of the driver of the Jeep; and the insurer of the Jeep was liable to pay compensation to the claimants.

5. As the evidence led by the claimants about the income of deceased Birendra Singh @ Beeru was not found reliable by the Tribunal, the income of the deceased was assessed at Rs. 15,000/- per annum on the basis of the notional income prescribed in the Second Schedule under Section 163-A of the Motor Vehicles Act. By deducting 1/3rd of Rs. 15,000/- as the personal expenses of the deceased, the claimants' dependency was assessed at Rs. 10,000/- per annum. By multiplying the annual dependency of Rs. 10,000/- with the multiplier of '14', the compensation was worked out to Rs. 1,40,000/-. The Tribunal awarded Rs. 37,000/- under other heads and thus, a total sum of Rs. 1,77,000/- was awarded as compensation

to the claimants for the death of Birendra Singh @ Beeru in the motor accident. The Tribunal, further, directed the insurer of the Jeep to pay interest at the rate of 4% per annum on the above amount of compensation to the claimants from the date of the claim petition.

6. Mr. N.S. Pundir, the learned counsel for the claimants submitted that the Tribunal has erred in not accepting the claimants' evidence about the income of the deceased; in selecting the lower multiplier of '14'; in awarding low compensation of Rs. 1,77,000/-; and in awarding interest at the lower rate of 4% per annum only.

7. Mr. M.K. Goyal, the learned counsel for respondent No. 2 Oriental Insurance Company Ltd., on the other hand, supported the Award and submitted that the Tribunal has been quite liberal in awarding substantial compensation of Rs. 1,77,000/- to the claimants.

8. The findings recorded by the Tribunal that deceased Birendra Singh @ Beeru died on account of the injures sustained by him in the motor accident on 22.12.2003; the accident occurred due to the rash and negligent driving of the driver of the Jeep; and the insurer of the Jeep was liable to pay compensation to the claimants have, now, attained finality as the respondents have not filed any appeal against the Award.

9. Now, we shall examine as to whether the compensation of Rs. 1,77,000/- awarded by the Tribunal to the claimants is just and proper compensation in the facts and circumstances of the case.

10. In a motor accident claim case, what is important is that the compensation to be awarded by the Tribunal / Court should be just and proper compensation in the facts and circumstances of the case.

The Apex Court, in the case of **T.N. State Transport Corpn. Ltd. Vs. S. Rajapriya and others** reported in **(2005) 6 Supreme Court Cases 236,** observed in paras 8 to 10:

> "8. The assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.
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> 9. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years' purchase.
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> 10. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered."

11. True, the evidence led by the claimants about the income of deceased Birendra Singh @ Beeru was not of clinching nature. We, therefore, do not find any fault in the approach of the Tribunal in discarding the evidence led by the claimants about the income of the deceased. Nevertheless, the assessment of the income of the deceased by the Tribunal at Rs. 15,000/- per annum, on the basis of the notional income prescribed in the Second Schedule under Section 163-A of the Motor Vehicles Act, requires reconsideration, as the same is on the lower side.

12. The notional income of Rs. 15,000/- per annum in the Second Schedule under Section 163-A of the Motor Vehicles Act was prescribed in the year 1994.

13. Section 163-A of the Motor Vehicles Act reads as follows:

> "163-A. Special provisions as to payment of compensation on structured formula basis. – (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.
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> (2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.
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> (3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

14. Above-quoted sub-section (3) of Section 163-A casts a duty on the Central Government to amend the Second Schedule from time to time keeping in view the increase in the cost of living. Inspite of the lapse of a period of more than 10 years, the Second Schedule has not been amended by the Central Government. We, therefore, deem it proper to take into consideration the erosion in the purchase value of the rupee during the period between 1994 to 2003 (the year of the accident in the present case). By taking into consideration the steep hike in the price index of the essential commodities and the resultant increase in the cost of living, we are of the opinion that the notional income of Rs. 15,000/- per annum prescribed in the Second Schedule

in the year 1994, would, in the year 2003, come to Rs. 30,000/- per annum.

15. Even otherwise, deceased Birendra Singh @ Beeru, who was aged about 36 years on the date of the accident, could have easily earned Rs. 80-90/- per day as an unskilled labourer. We, therefore, propose to re-compute the compensation taking the income of deceased Birendra Singh @ Beeru at Rs. 30,000/- per annum.

16. By deducting 1/3rd of Rs. 30,000/- as the personal expenses of the deceased, the claimants' dependency is assessed at Rs. 20,000/- per annum.

17. Deceased Birendra Singh @ Beeru was aged about 36 years on the date of the accident. The claimants are his widow; for minor daughters; and two minor sons. Considering that the deceased was 36 years of age; his widow Smt. Basanti Devi is shown aged about 36 years; whereas their minor children were aged about 7 years to 17 years, we are satisfied that the Tribunal has rightly selected the multiplier of '14'.

18. By multiplying the annual dependency of Rs. 20,000/- with the multiplier of '14', the compensation works out to Rs. 2,80,000/- . The claimants are, further, entitled to Rs. 5,000/- towards Funeral Expenses; Rs. 5,000/- for Loss of Consortium to the widow; and Rs. 5,000/- for Loss of Estate. Thus, the claimants become entitled to receive a total sum of Rs. 2,95,000/- (Rupees Two Lakhs and Ninety Five Thousand only) as compensation for the death of Birendra Singh @ Beeru.

19. The interest awarded by the Tribunal at the rate of 4% per annum is certainly on the lower side. In our opinion, the interest

ought to have been awarded at the rate of 7% per annum. With a view to avoid any possible delay in the computation of the amount of interest by the Claims Tribunal and any possible dispute between the parties about the period for which the claimants should get interest, we deem it proper to quantify the same ourselves. The accident, in the present case, took place on 22.12.2003 and the claim petition was filed on 03.03.2004. The impugned Award was passed on 20.04.2005 and the amount awarded by the Tribunal was deposited by the insurer of the Jeep on 25.05.2005. Taking all the above-mentioned relevant factors into consideration, we quantify the amount of interest at Rs. 30,000/-.

20. Thus, the claimants become entitled to receive a total sum of Rs. 3,25,000/- (Rupees Three Lakhs and Twenty Five Thousand only) [Rs. 2,95,000/- towards compensation + Rs. 30,000/- quantified as Interest].

21. For the foregoing reasons, the appeal filed by the claimants under Section 173 of the Motor Vehicles Act for enhancement of the compensation is allowed in part. The compensation of Rs. 1,77,000/- awarded by the Tribunal is enhanced to Rs. 2,95,000/- with further quantified interest at Rs. 30,000/-.

22. The insurer of the Jeep i.e. respondent No. 2 – the Oriental Insurance Company Ltd. is directed to deposit the enhanced amount of compensation and the quantified interest within a period of two months from today before the concerning Claims Tribunal. The amount of compensation and interest, deposited by the Insurance Company in satisfaction of the impugned Award dated 20.04.2005, shall be given due adjustment by the Claims Tribunal. The enhanced amount of compensation and interest shall be disbursed in the same manner and proportion as mentioned in the impugned Award.

23. No order as to costs.

(J.C.S. Rawat, J.) **(Rajeev Gutpa, C.J.)**
16.11.2006 16.11.2006

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